

DMB

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA**

(1) PAYNE TRANSPORT, LLC, and  
(2) RICHARD PAYNE

Plaintiffs,

vs.

(1) NEW ALLIANCE INSURANCE  
BROKERS, INC. and  
(2) LUIS MARCELO POVOLO,

Defendants.

Choctaw County  
Case No.: CJ-17-18

USDCEDO Case No.: 17-CV-246-SPS

**NOTICE OF REMOVAL**

TO THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA:

COMES NOW the defendants, New Alliance Insurance Brokers, Inc. (“New Alliance”) and Luis Marcelo Povolo (“Povolo), and pursuant to Title 28 U.S.C. §§1441 and 1446 file this Notice of Removal, removing plaintiffs’ civil action against them from the District Court of Choctaw County, Oklahoma, to the United States District Court for the Eastern District of Oklahoma.

1. This case is a civil action in which the matter in controversy in actuality exceeds the sum or value of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs, and is between citizens of different states. [Exhibit 1 – Second Amended Petition].

2. Plaintiffs have made specific claims to actual damages which total \$59,160.00. [Exhibit 1 – Second Amended Petition, ¶112]. However, plaintiffs also seek compensation for “late fees, interest charges, fines and other economic damages” which, when added to the specific allegations as to actual damages likely exceed \$75,000.0, exclusive of interest and costs. Moreover, plaintiffs failed to properly plead an amount in controversy as required pursuant to Title 12 O.S. §2008(A)(2). [Exhibit 1 – Second Amended Petition, ¶¶109–113].

3. Further, plaintiffs specifically claim punitive damages. [Exhibit 1 – Second Amended Petition. ¶¶111–112]. Under Oklahoma’s punitive damages statute, Category I punitive damages allow for the greater of \$100,000.00 or the amount of actual damages awarded. Title 23 O.S. §9.1. Clearly, plaintiffs seek damages in excess of \$75,000.00, based on their actual damage claim and punitive damage claim.

4. As such, this case is removable pursuant to Title 28 U.S.C. §1332(a) and Title 28 U.S.C. § 1441 (a).

5. The plaintiffs allege they are located in or residents of Choctaw County, Oklahoma. [Exhibit 1 – Second Amended Petition ¶¶1 and 2]. New Alliance is a California corporation and its principal place of business is in Long Beach, California; and Povolo is a resident of California. This is an action for an alleged failure to procure insurance. [Exhibit 1 – Second Amended Petition, ¶¶7–18].

6. Plaintiffs’ case against defendants was commenced on February 15, 2017, by their original petition filed in the District Court of Choctaw County, Oklahoma. Defendants were served with the plaintiffs’ petition, first amended petition and second amended petition as well as summons on June 8, 2017, therefore this removal is timely pursuant to Title 28 U.S.C. §1446(b).

7. Plaintiffs’ second amended petition is attached pursuant to Title 28 U.S.C. §1446(a). [Exhibit 1 – Second Amended Petition]. Further, pursuant to LCvR 81.2, a clearly legible copy of all pleadings and summons filed or served in the case as well as the docket sheet of the District Court of Choctaw County, Oklahoma are attached. [Exhibit 2].

WHEREFORE, Defendants, New Alliance Insurance Brokers, Inc. and Luis Marcelo Povolo, request removal of the plaintiffs’ action from the District Court of Choctaw County, Oklahoma, to the United States District Court for the Eastern District of Oklahoma.

Respectfully submitted,  
SECREST, HILL, BUTLER & SECREST

s/Roger N. Butler, Jr.  
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**ATTORNEYS FOR DEFENDANTS**  
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**and MARCELO LUIS POVOLO**

**CERTIFICATE OF MAILING**

I hereby certify that on June 26, 2017, I electronically transmitted the above and foregoing Notice of Removal to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Jonathan R. Ortwein  
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s/Roger N. Butler, Jr.

0041/16005/Notice of Removal